

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JAMES H. GORBEY, JR., Administrator of the
Estate of Marissa Rose Fishman, Deceased,

Plaintiff,

vs.

RICHARD LONGWILL, BARBARA
LONGWILL, AIR BASE CARPET MART, INC.
d/b/a Air Base Distributing, Inc. d/b/a Air Base
Carpet Mart, AIR BASE DISTRIBUTING, INC.,
ASHLAND CONSTRUCTION COMPANY, INC.,
JOSEPH RIZZO & SONS CONSTRUCTION,
VINCENT RIZZO CONSTRUCTION CO., INC.
d/b/a Ashland Construction Co., Inc., JOSEPH V.
RIZZO, and VINCENT RIZZO,

Defendants.

JOINT STATUS REPORT

Pursuant to this Court's January 5, 2007 Order, the parties to this action hereby submit this joint status report.

This is a Wrongful Death and Survival Action that involves the August 30, 2002 drowning of Marissa Rose Fishman at an indoor swimming pool located at the home of her maternal grandparents at 3220 Coachman Road, Wilmington, Delaware. Plaintiff's decedent was approximately two years of age at the time of her death. At the time of her death, she was visiting her grandparents' house in Delaware. Plaintiff alleges that the workmen employed by the Longwill defendants left a door open to the home's indoor pool and that Plaintiff's decedent was allowed to enter the pool area and, ultimately, the pool itself. Plaintiff further alleges that the indoor pool constitutes an artificial condition on the Longwill defendants premises, thus creating an attractive nuisance. Plaintiff alleges that the Longwill defendants failed to exercise reasonable care to eliminate the danger presented by the indoor pool. Defendants deny liability

and damages. (Also See Proposed Pretrial Order filed on 9/5/06 at Docket No. 111). Defendants Air Base filed a Motion for Summary Judgment on 2/16/06 at Docket No. 71 and an Order granting said Motion was entered on 4/12/06 at Docket No. 79. Defendants Longwill filed a Motion for Summary Judgment on the grounds that the Delaware Guest Statute (25 *Del. C.* § 1501) bars plaintiffs' claims against the defendant grandparents, Richard and Barbara Longwills. That Motion has been fully briefed and is awaiting disposition by the Court.¹ Defendants Ashland filed a Motion for Partial Summary Judgment on Choice of Law and Damages, which is joined by the Longwill defendants.² Defendants Ashland also filed a Motion for Summary Judgment on Liability.³ These Motions have been fully briefed and are awaiting disposition by this Court.

In the event that any issues remain in the case after the Court rules on the summary judgment motions, Defendants Ashland reserve the right to depose Alan Meade, P.E.

A Status Telephone Conference before the Honorable Mary Pat Thyng is scheduled for January 19, 2007 at 11:00 a.m. A First Amended Scheduling Order sets forth a pre-trial conference on April 23, 2007, with the Proposed Pretrial Order due by March 23, 2007, and jury trial date of May 23, 2007.

¹ The Longwill's filed their Opening Brief on 4/27/06 at Docket Nos. 83 and 84 and filed their Reply Brief on 5/18/06 at Docket No. 98. Plaintiff filed a Response and Answering Brief to Defendants Longwill's Motion for Summary Judgment on 5/11/06 at Docket Nos. 95 and 96.

² The Opening Brief was filed on 4/17/06 at Docket Nos. 80 and 81 and filed their Amended Reply Brief on 5/5/06 at Docket No. 91. Plaintiff filed a Response and Answering Brief to Defendants Ashland's Motion for Partial Summary Judgment as to Choice Law on 5/1/06 at Docket Nos. 87 and 88.

³ The Opening Brief was filed on 4/28/06 at Docket Nos. 85 and 86 and Reply Brief on 5/30/06 at Docket No. 101. Plaintiff filed an Answering Brief to Defendants Ashland's Motion for Summary Judgment as to Liability on 5/22/06 at Docket No. 99. Plaintiff filed a Motion for Leave to File Sur Reply on 6/14/06 at Docket No. 103. Defendants Ashland filed a Response to Plaintiff's Motion for Leave on 6/20/06 at Docket No. 104.

Respectfully submitted,

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